

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35106

**United States Department Of Energy
Rail Construction And Operation
Caliente Rail Line In Lincoln, Nye,
And Esmeralda Counties, Nevada**

**Testimony of the
Western Shoshone National Council**

December 04, 2008

**Western Shoshone National Council
7231 S. Eastern Avenue, Box 107
Las Vegas, NV 89119**

Testimony in Opposition to an Application for a Certificate of Public Convenience and Necessity

My name is Ian Zabarte I am the Secretary of State, of the Western Shoshone National Council, principle man for foreign affairs I am here to defend the basic human rights and territorial sovereignty of Newe Sogobia, the Western Shoshone Nation The Western Shoshone National Council is the original traditional self-determined government de jure of the Western Shoshone Nation Our spiritual beliefs, culture and customs in relation to our country determine who we are as a people Who we are collectively as a distinct people matters most and is what makes us feel useful as citizens in our own nation We hold on to our beliefs and values because they are real, authentic and a part of our culture Also, a part of our culture is an oral tradition We appreciate this opportunity to provide oral testimony in the hope the United States will wake up from the American dream of indifference and environmental degradation

The Western Shoshone National Council is opposed to the Department of Energy Application for a certificate of Public Convenience and Necessity Finance Document Number 35106 now before the Board The Western Shoshone Nation challenges the basic assumptions of the US asserting ownership to the entire 300 mile long Caliente Rail Corridor as set forth in the Department of Energy application.

The Treaty of Ruby Valley is a fact of International Law and defines the intercourse between the United States and the Western Shoshone Nation Treaties are the accepted manner of foreign relations practice between sovereign governments The Treaty of Ruby Valley is in full force and effect American patriots understand that treaties are the supreme law of the land under Article 6 of the United States Constitution The Department of Energy misidentifies the ownership status of the lands within the proposed railroad corridor. By and through the Treaty of Ruby Valley the Western Shoshone Nation asserts original and continuing ownership to the lands that constitute the 300 mile proposed railroad corridor In 1863 the United States agreed to purchase specific interest sought by the treaty then failed to fulfill the payment schedule in Article 7, a substantial

breach of the purchase agreement clause Our government is willing to consider United States claims under provisions of the Treaty of Ruby Valley The Western Shoshone Nation seeks implementation of Article 6 creating a reservation from within the boundaries described in Article 5. Some of the suitable lands sought for implementing Article 5 are within the proposed corridor Unfortunately, we have no word from Washington and instead suffer the crippling legacy of injustice and environmental racism as institutions of the United States government we trust to keep us safe fail to do so The United States fails to restrain acts that violate the Treaty of Ruby Valley giving no justification for the violation of our borders, sovereignty and well-being of the peaceful Western Shoshone people The Western Shoshone people are already burdened by risk for United States nuclear development from 928 nuclear explosions that released radioactive fallout adversely affecting the health and quality of life of our people and land

Deep social, cultural and political issues are at the core of the Western Shoshone Nation's opposition to the Department of Energy application for a railroad construction certificate The scars of Western Shoshone abuse as victims of the United States are not healed and not addressed by the Department of Energy application The Western Shoshone perspective views the US government as making a practice of abuse, one government institution after another On one had government agencies selectively target the most prominent Western Shoshone nationals for abuse, such as, Carrie Dann, Western Shoshone National Council Representative and former Western Shoshone National Council Chief Raymond Yowell, both of whom are engaged in the peaceful expression and display of property ownership rights contemplated by the Treaty of Ruby Valley, " as hunters or herdsman" On the other hand, physically harm has resulted by the willful negligence of the United States to the health and well-being of the Western Shoshone people in the testing of weapons of mass destruction Willful negligence is the common theme uniting the past United States nuclear legacy with the current proposal to transport and store high-level nuclear waste at Yucca Mountain within Newe Sogobia

The Board is hereby formally noticed that any action certifying the Department of Energy application without a claim made under the Treaty of Ruby Valley is manifest of willful intent by the Board to commit crimes against the humanity and dignity of the Western Shoshone people

Our country is occupied today by belligerent United States institutions that claim our title was extinguished by proceedings in the Indian Claims Commission and the Supreme Court in the case United States v Dann. The Supreme Court ruled in error. Gradual encroachment, acts the United States claims constitute a taking in the Indian Claims Commission proceedings were allowed under the terms of the Treaty of Ruby Valley and could not effect a title transfer or extinguishment within the terms of the Treaty of Ruby Valley. The Treaty of Ruby Valley is a legal fact the Department of Energy continues to ignore. Further, the Indian Claims Commission never completed its statutorily required final report to Congress in Docket 326-K and was disbanded in 1978. The final report to Congress did not cease to be a condition of finality when the Indian Claims Commission was terminated by Congress in 1978. Thus, since the Indian Claims Commission no longer exists to file the necessary report, it is now too late for the United States to ever achieve "finality" in the Western Shoshone case within the statutory framework of the Indian Claims Commission Act. No reference to the assertions by the Department of Energy in the application that "Western Shoshone title to Nevada lands had gradually been extinguished.. " exists. Such misrepresentations do a disservice to the Board and the public.

Consider the 1861 Act Of Congress Organizing The Territory Of Nevada

" . Provided, further, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory, but all such

territory shall be excepted out of the boundaries and constitute no part of the Territory of Nevada, until said tribe shall signify their assent to the President of the United States to be included within the said Territory

The rights of the Western Shoshone Nation continue to this day and beyond. The strength of the United States case for title to the lands at issue in the Department of Energy application is that of a belligerent trespasser at best. Title to the territorial sovereignty of the Western Shoshone Nation rests upon the vestitive facts that International Law recognizes as creating title -- the Treaty of Ruby Valley. The United States willingly consented to the Treaty of Ruby Valley recognizing the legal right, privileges, powers and immunities that are true of Western Shoshone nationals that are not conferred upon others. Possession of the land is a root and practice of the Western Shoshone concept of property ownership in privity with other Western Shoshone nationals. Our nationality is Western Shoshone. Our allegiance is to the Western Shoshone Nation and a unique way of life that has been practiced with Newe Sogobia for a thousand generations. We oppose the Department of Energy Application for a Certificate of Public Convenience and Necessity because it is a crime against humanity and not convenient and necessary for the United States Department of Energy with the assistance of the Board to destroy the social, cultural and political fabric of the Western Shoshone Nation by creating trackage within Newe Sogobia.